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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,003	09/29/2003	Takehiro Nakamura	15689.49.7	2384
22913	7590	01/20/2010	EXAMINER	
Workman Nydegger 1000 Eagle Gate Tower 60 East South Temple Salt Lake City, UT 84111			AJIBADE AKONAI, OLUMIDE	
			ART UNIT	PAPER NUMBER
			2617	
			MAIL DATE	DELIVERY MODE
			01/20/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b> 10/674,003	<b>Applicant(s)</b> NAKAMURA ET AL.	
	<b>Examiner</b> OLUMIDE T. AJIBADE AKONAI	<b>Art Unit</b> 2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 02 November 2009.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 10-41 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-13, 17-20, 24-34 and 39-41 is/are allowed.
- 6) ☒ Claim(s) 14, 16, 21, 23 and 35-38 is/are rejected.
- 7) ☒ Claim(s) 15 and 22 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☒ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 2 2009 has been entered.

### ***Priority***

2. Acknowledgment is made of applicant's claim for foreign priority based on an application filed in Japan on April 17 1997. It is noted, however, that applicant has not filed a certified copy of the 116,192/1997 application as required by 35 U.S.C. 119(b).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 14, 16, 21, 23 and 35-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over **Hakkinen 5,839,056** in view of **Soliman 6,101,179**.

Regarding **claims 14, 16, 21, and 23**, Hakkinen discloses a communication system comprising a first communication apparatus and a second communication apparatus for performing a power control method (base station 1 and mobile station MS1, see fig. 2, col. 4, lines 60-65), wherein the first communication apparatus (base station 1, see fig. 2, col. 5, lines 63-64) comprises: first transmission means (antenna 3 and 12, see col. 5, lines 63-65) for performing the step of transmitting transmission power control information (power-up or power-down message, see col. 5, lines 10-30) which is based on SIR measurement results in the first communication apparatus to the second communication apparatus (see col. 6, lines 49-67, col. 7, lines 1-25); and the second communication apparatus (MS 1 see fig. 3, col. 6, lines 17-20) comprises: first

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reception means for performing the step of receiving the transmission power control information which is based on SIR measurement results in the first communication apparatus from the first communication apparatus (antenna 13 receiving power-up or power-down message based on SIR signal s transmitted to the base station, see fig. 3, col. 5, lines 10-30); control means for performing the step of carrying out transmission power control of the second communication apparatus in accordance with the transmission power control information received from the first communication apparatus after the second communication apparatus becomes able to receive the transmission power control information from the first communication apparatus (transmitting power up or power down command from the base station to the mobile station base on SIR measurements signals received from the MS1, see col. 5, lines 10-30).

Hakkinen does not specifically disclose the first communication apparatus comprising a second transmission means for transmitting information regarding an initial value of transmission power of the second communication apparatus to the second communication apparatus; and the second communication apparatus comprising second reception means for receiving the information regarding the initial value of the transmission power from the first communication apparatus, and wherein the control means sets an initial value of transmission power of the second communication apparatus in accordance with the information regarding the initial value of the transmission power and starts out the transmission power control with the initial value.

Soliman however discloses a first communication apparatus (base station 100, see fig. 1, col. 5, lines 4-6) comprising a transmission means (antenna 113, see fig.

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1, col. 6, lines 57-58) for transmitting information regarding an initial value of transmission power of the second communication apparatus to the second communication apparatus (base station transmitting PILOT\_PWR to the mobile station 102, the PILOT\_PWR being used by the mobile station 102 to determine its initial transmit power, see col. 5, lines 44-53, col. 6, lines 15-23); and the second communication apparatus (mobile station 102, see col. 5, lines 5-6) comprising second reception means antenna 104, see col. 5, lines 13-16) for receiving the information regarding the initial value of the transmission power from the first communication apparatus (mobile station 102 receiving the PILOT\_PWR signal transmitted from base station 100, see fig. 1, col. 5, lines 44-48), and wherein the control means sets an initial value of transmission power of the second communication apparatus in accordance with the information regarding the initial value of the transmission power and starts out the transmission power control with the initial value (base station transmitting PILOT\_PWR to the mobile station 102, the PILOT\_PWR being used by the mobile station 102 to determine its initial transmit power, see col. 5, lines 44-53, col. 6, lines 15-23).

It would therefore have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teaching of Soliman, by transmitting an initial mobile station transmit power parameter from the base station to the mobile station, into the system of Hakkinen for the benefit enabling the mobile station be able to set an initial transmission power before receiving power control signals from the base station.

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Regarding claims **35, 36, 37 and 38** as applied to claims 14, 16, 21 and 23, Hakkinen as modified by Soliman disclose the claimed limitation. Hakkinen further discloses wherein the communication apparatus is a mobile station (mobile station MS1, see fig. 2, col. 4, lines 60-65) and the another communication apparatus is a base station (BTS see fig. 3, col. 4, lines 60-65, col. 6, lines 17-20).

### ***Allowable Subject Matter***

5. Claims 15 and 22 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 10-13, 17-20, 24-34 and 39-41 allowed.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Gilhousen et al 5,485,486 discloses a method and apparatus for controlling transmission power in a CDMA cellular mobile telephone system.

Larborde et al 5,790,940 discloses power control for TDMA satellite communication system.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to OLUMIDE T. AJIBADE AKONAI whose telephone number is (571)272-6496. The examiner can normally be reached on M-F, 8.30p-5p.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Appiah can be reached on 571-272-7904. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

OA

/Charles N. Appiah/  
Supervisory Patent Examiner, Art Unit 2617